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11 *Felix P. Camacho, Governor of Guam*

12
13 IN THE UNITED STATES DISTRICT COURT
14 DISTRICT OF GUAM

15 MARY GRACE SIMPAO, CHRISTINA
16 NAPUTI, and JANICE CRUZ, on behalf of
17 themselves and a class of others similarly
18 situated,

18 Plaintiffs,

19 vs.

20 GOVERNMENT OF GUAM,

21 Defendant,

22 vs.

23 FELIX P. CAMACHO, in his official capacity as
24 Governor of Guam,

25 Proposed Intervenor-Defendant.
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FILED
DISTRICT COURT OF GUAM

JUN 27 2005

MARY L.M. MORAN
CLERK OF COURT

102

Civil Case No. CV04-00049

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION TO INTERVENE**

[ORAL ARGUMENT REQUESTED]

ORIGINAL

1 The Governor of Guam Felix P. Camacho (the "Governor") respectfully submits
2 this memorandum of points and authorities in support of his motion to intervene in this action as
3 an intervenor-defendant under Rule 24(a) of the Federal Rules of Civil Procedure ("FRCP) or,
4 alternatively, under Rule 24(b) of the FRCP.

5 INTRODUCTION

6 This putative class action is the last-filed of three cases in the District Court of
7 Guam seeking class-wide relief with regard to the application of the earned income tax credit
8 ("EIC") to Guam under the Guam Territorial Income Tax (the "GTIT"). As the District Court of
9 Guam previously held in two orders in the first of the three EIC actions, the *Santos* action,¹ the
10 Governor is charged with the administration of the GTIT under the Organic Act of Guam. The
11 Governor already is a party to the other two EIC actions, the *Santos* action and the *Torres* action.²
12 In *Santos*, the Governor has reached a settlement agreement with the court-appointed interim
13 class counsel and named plaintiff that, if approved by the Court, will resolve most if not all claims
14 of the potential class members in this action.

15 The Governor seeks to intervene in this action because his interests are not
16 adequately represented by the current parties. The Governor ultimately bears responsibility for
17 carrying out any judgment regarding the GTIT. However, the only named defendant is the
18 Government of Guam, represented by the Attorney General of Guam. As was already established
19 in the two previous orders of this Court in *Santos*, the Attorney General and Governor have
20 disagreed regarding their roles concerning the GTIT, and the District Court has held that such
21 matters are controlled by the Governor. More recently, the Attorney General failed to disclose
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26 ¹ *Santos v. Camacho, et al.*, Guam Dist Ct. Civ. Case No. CV04-00006 (the "*Santos*
27 action").

28 ² *Torres v. Govt. of Guam, et al.*, Guam Dist Ct. Civil Case No. CV04-00038 (the "*Torres*
action").

1 the existence of the settlement in *Santos* to this Court upon the Governor's request, and has yet to
2 execute that settlement as to form and legality.

3 Accordingly, for the Governor's interests in this litigation to be represented, he
4 therefore must intervene as of right (or, alternatively, permissively). This will permit him to
5 assert the *Santos* settlement and judgment as a defense and to move to stay this action pending a
6 determination in *Santos*, just as the Governor has already done in the *Torres* action. In
7 compliance with FRCP 24(c), a proposed form of answer is attached hereto.
8

9 FACTS

10 The *Santos* action was filed in February 2004. (Benjamin Decl. at Exh. A.) It
11 sought to create a class action as to all persons alleged to be eligible to receive the EIC under the
12 GTIT. (*See id.*) The named defendants included the Government, the Governor, and the
13 Directors of Administration and Revenue & Taxation. (*Id.*)
14

15 In June 2004, while the Governor was off-island, a proposed \$60 million class
16 action settlement was reached the *Santos* action between the acting-Governor, the Attorney
17 General, certain government officers, and the plaintiff and her counsel. (Benjamin Decl. Exh. B.)
18 The agreement received preliminary approval on June 17, 2004. (*Id.* Exh. B.) On June 24, 2004,
19 the Court stated that it would place ten percent of the \$60 million, or \$6 million, aside for
20 potential attorneys' fees. (*Id.* Exh. C.)
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22 Just days later, two motions to intervene were filed on behalf of putative class
23 representatives by their respective counsel. (Benjamin Decl. Exh. E.) These were by Christina
24 Naputi (one of the plaintiffs in this case) and Charmaine Torres. (*Id.*) On August 5, 2004, the
25 District Court denied those motions. (Benjamin Decl. Exh. E).
26

27 In August 2004, Torres filed her own putative EIC class action, the *Torres* action.
28 (Benjamin Decl. Exh. F.) The Governor, Attorney General, and Government are the named

1 defendants in that action. (*Id.*) Meanwhile, Naputi filed an appeal of the denial of intervention.
2 (Benjamin Decl. Exh. G).

3 In the *Santos* action, on October 13, 2004, the Governor received an opinion from
4 the Attorney General stating that the previous settlement was illegal. (Benjamin Decl. Exh. I).³
5 On October 28, 2004, the Governor instructed the Attorney General to take no further actions
6 pending a determination on legality. (*Id.* Exh. J). On November 8, 2004, the Attorney General
7 instead filed papers stating only that the Governor was having "second thoughts," and failing to
8 disclose that his own office had stated that continuing with the settlement could expose the
9 Governor to criminal misdemeanor liability under 5 G.C.A. § 22401. (*Id.* Exh. K).

11 In November 2004, the Governor filed an appearance in the *Santos* action through
12 independent counsel and objected to the settlement, raising the illegality issue. (Benjamin Decl.
13 L.) The Attorney General moved to strike this appearance. (Benjamin Decl. Exh. N.)

15 In December 2004, plaintiff Naputi dismissed her appeal of the intervention order
16 and filed this above-captioned action with plaintiff Mary Simpao (plaintiff Janice Cruz was added
17 later). (Benjamin Decl. ¶8 & Exh. M.) As with the previously filed *Santos* and *Torres* actions,
18 the plaintiffs sought to create a class action to recover the EIC under the GTIT. (Benjamin Decl.
19 Exh. M).

21 On February 9, 2005, the District Court of Guam denied the motion to strike in
22 *Santos*, holding that the Governor exclusively controlled the administration and execution of the
23 GTIT and was entitled to appear through counsel who advocated his views. (Benjamin Decl.
24 Exh. N). The Court subsequently denied a motion to reconsider this decision. (Benjamin Decl.
25 Exh. O).

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27 ³ The ground for this opinion was 5 G.C.A. § 22401, which, *inter alia*, makes it a criminal
28 misdemeanor to continue with a Government of Guam contract where there is no adequate fund
or appropriation identified to pay for it.

1 In March 2005, in *Santos*, the Governor, the Directors of the Departments of
2 Administration and Revenue & Taxation, the Attorney General, the plaintiff, and her counsel
3 (who had been appointed Interim Class Counsel) agreed to enter into a mediation before JAMS
4 Mediator Catherine Yanni, Esq. (Benjamin Decl. Exh. P.) In May 2005, all parties and attorneys
5 to the mediation (except for the Attorney General) entered into a binding term sheet. (Benjamin
6 Decl. Exh. R.)

8 On June 7, 2005, the Governor through his attorneys requested that the Attorney
9 General give notice of the term sheet in this action. (Benjamin Decl. Exh. T.) The Attorney
10 General did not respond. (Benjamin Decl. ¶ 21.) The Governor was forced to file his own notice
11 in this action.

12 On June 20, 2005, all parties and attorneys to the *Santos* mediation (except for the
13 Attorney General) executed a binding settlement agreement for \$90 million that expressly
14 addressed the funding issues that had caused legality concerns with regard to the last settlement.
15 (Benjamin Decl. Exh. U.) On June 20 and 21, 2005, they filed the necessary pleadings to request
16 preliminary approval of the settlement and conditional class certification so that they could
17 proceed with class notice. (Benjamin Decl. Exhs. V, W & X.) The Attorney General has yet to
18 approve the settlement as to form and legality. (Benjamin Decl. Exh. U at Signature Block.)

20 The Governor now brings this motion to intervene in light of: (1) his exclusive
21 control over the administration of the GTIT as established by the District Court of Guam; (2) his
22 status as a named defendant in two almost-identical putative EIC class actions; (3) the *Santos*
23 settlement and his need to be able to move to stay this action based on this settlement and to be
24 able to assert that settlement as a defense to this action; and (4) and the Attorney General's
25 apparent refusal to represent the Governor's position regarding the GTIT or *Santos* settlement. If
26 the motion is granted, the Governor will seek to defend his interests in this case, assert the
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1 settlement as a defense, and move to stay this action pending a determination in *Santos* (a similar
2 stay motion having been filed in *Torres* (see Benjamin Decl. Exh. Y)).

3 ARGUMENT

4 **I. INTERVENTION AS OF RIGHT**

5 FRCP 24 “traditionally receives liberal construction in favor of applicants for
6 intervention.” *Arakaki v. Cayetano*, 324 F.3d 1078, 1083 (9th Cir. 2003) (citing *Donnelly v.*
7 *Glickman*, 159 F.3d 405, 409 (9th Cir. 1998)). In subpart (a), it states that a party may intervene
8 as of right:
9

10 (1) when a statute of the United States confers an unconditional
11 right to intervene; or (2) when the applicant claims an interest
12 relating to the property or transaction which is the subject of the
13 action and the applicant is so situated that the disposition of the
14 action may as a practical matter impair or impede the applicant’s
ability to protect that interest, unless the applicant’s interest is
adequately represented by existing parties.

15 FRCP 24(a). Based on this rule, the Ninth Circuit has adopted a four-prong test for intervention:

16 A party seeking to intervene as of right must meet four
17 requirements: (1) the applicant must timely move to intervene; (2)
18 the applicant must have a significantly protectable interest relating
19 to the property or transaction that is the subject of the action; (3)
20 the applicant must be situated such that the disposition of the
action may impair or impede the party’s ability to protect that
interest; and (4) the applicant’s interest must not be adequately
represented by existing parties.

21 *Arakaki*, 324 F.3d at 1083 (citing *Donnelly*, 159 F.3d at 409). The Governor’s motion to
22 intervene as of right easily satisfies these four criteria.

23 First, this motion is timely. Pleadings only recently closed in this matter, with an
24 amended answer having been filed on June 7, 2005. The only rulings on the merits that have
25 occurred are on two issues that were prerequisites for this case to move forward: (1) that the EIC
26 applied to Guam; and (2) that the Court had jurisdiction over the EIC claims. (See June 16, 2005
27 Order.) In that recent order, the Court instructed the plaintiffs that they now had to proceed with
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1 attempting to determine if this action could be certified as a class action, and to proceed with this
2 case as a tax refund lawsuit. (*Id.*) Thus, this case is still at any early stage.

3 This motion also is timely because the Governor has acted swiftly once the need to
4 intervene arose. Previously, the Attorney General's interest in this litigation had been to defend
5 against it, much as had been the Governor's. However, as discussed above, in recent weeks the
6 Attorney General both has failed to execute the settlement as to legality and form and failed to
7 honor the Governor's request that the Attorney General alert the Court to the existence of the
8 settlement. Meanwhile, as he already has done in *Torres*, the Governor needs to be in a position
9 in this case both to assert the settlement as a defense and to ask the Court to stay this later-filed
10 case pending a determination on the settlement. Under such circumstances, the Governor's need
11 to protect his interests in the administration of the GTIT and regarding the settlement require that
12 he intervene in this litigation.
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15 Second, the Governor has a significant protectable interest in this litigation. *See*
16 *Sierra Club v. EPA*, 995 F.2d 1478, 1484 (9th Cir. 1993) (requirement of significantly protectable
17 interest generally satisfied when "the interest is protectable under some law, and that there is a
18 relationship between the legally protected interest and the claims at issue"). Congress adopted the
19 Organic Act of Guam, 48 U.S.C. § 1421, *et seq.*, to serve as the functional equivalent of Guam's
20 constitution. *Haeuser v. Dept. of Law*, 97 F.3d 1152, 1156 (9th Cir. 1996). The Organic Act
21 states: "The administration and enforcement of the Guam Territorial Income Tax shall be
22 performed by or under the supervision of the Governor." 48 U.S.C. § 1421i(c). It further states
23 that the Governor has "the same administrative and enforcement powers and remedies with regard
24 to the Guam Territorial Income Tax as the Secretary of the Treasury, and other United States
25 officials of the executive branch, have with respect to the United States income tax." 48 U.S. C. §
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1 1421i(d)(2). Accordingly, it is the Governor who sets and administers tax policy on behalf of the
2 Government of Guam.

3 In fact, the District Court of Guam has already ruled that the Governor has a
4 protected interest in advancing his views as to the application of the GTIT in Guam, holding that
5 "the Organic Act grants the Governor exclusive authority to administer and enforce laws related
6 to the GTIT." (Benjamin Decl. Exh. V at 3). It was for this reason it denied the Attorney
7 General's motion to strike the appearances of independent counsel for the Governor in the *Santos*
8 action. (See Benjamin Decl. Exhs. N & O). Thus, the second intervention prong is satisfied.

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10 Third, the Governor is so situated that disposition of this proceeding will impair
11 and impede his ability to protect his interest. If, for example, a class is certified in this action, it
12 will very much interfere with carrying out the *Santos* settlement, which calls for a similar EIC
13 class to be certified. Moreover, even if a class is not certified, any ruling on the merits that
14 awards a tax refund to plaintiffs will require the Governor to enforce the judgment through the
15 GTIT. See 48 U.S.C. § 1421i(h)(2) (stating that final tax refund judgments are paid by the
16 Governor). And, such judgments also will have an arguable effect as persuasive precedent on the
17 other two EIC cases (*Santos* and *Torres*) in which the Governor is a named defendant. For all
18 these reasons, disposition of this case will affect the Governor's protected interests in the
19 administration and execution of the GTIT.
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22 Fourth, the Governor's interests are not adequately represented. The Attorney
23 General represents the Government of Guam as its attorneys. In *Santos*, the Attorney General and
24 Governor disagreed regarding their roles concerning the GTIT, and the District Court held that
25 such matters are controlled by the Governor. Now, in this case, the Attorney General failed to
26 disclose the existence of the settlement in *Santos* to this Court upon the Governor's request, and
27 has yet to execute that settlement as to form and legality. The Governor needs to intervene to be
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1 able to protect his right to control the administration and execution of the GTIT, and to be able to
2 assert the defenses and rights created by the *Santos* settlement in the event the Attorney General
3 will not. *See Arakaki*, 324 F.3d at 1086 (stating test for adequacy of representation includes
4 whether or not existing parties will advance intervenor's arguments). Further, the presence of the
5 Governor—the office of the Government of Guam tasked with enforcing and administering the
6 EIC—plainly adds an additional element to this litigation that can only help to definitively
7 resolve this matter. *See id.*

9 The adequacy of representation issue also is controlled by the District Court's
10 previous Orders in *Santos*, which have already recognized that the Attorney General does not
11 adequately represent the Governor, who has a right to his own voice:

12 If the Attorney General were to control all legal policy and
13 litigation decisions for the Government of Guam, even those
14 disputes arising from the [GTIT], then the Governor would be
15 essentially striped of all power given to him by the Organic Act to
16 administer and enforce the income tax laws. The Court will not
place such a restriction on the Governor's power.

17 * * *

18 **[T]he Governor, not the Government of Guam or the Attorney**
19 **General, is mandated to administer and enforce the laws**
20 **pertaining to the [GTIT]. Accordingly, the Governor must**
21 **have a say in this action.**

22 (Benjamin Decl. Exh. N at 8 (emphasis added).) This was reiterated in the March 2, 2005 Order,
23 which stated:

24 The Attorney General contends that the Court should listen to him
25 instead of the Governor, since the Attorney General is responsible
26 for establishing a "coherent and uniform legal policy" for the
27 Governor of Guam. On the other hand, as the chief executive
28 officer of the Government of Guam granted with the additional
exclusive authority to administer and enforce the GTIT laws, the
Governor has the responsibility for setting a "coherent and uniform
tax policy" for the island. **The Governor's authority would be**
rendered meaningless if the Attorney General were permitted
to prevent the Governor from being heard in this action except

1 through him. The Attorney General essentially seeks to supplant
2 his decision for that of the Governor, and this Court will not allow
such usurpation to occur.

3 (Benjamin Decl. Exh. O at 4.) Thus, for the forgoing reasons, the Governor may intervene as of
4 right under FRCP 24(a).

5 II. PERMISSIVE INTERVENTION

6 Alternatively, the Governor seeks permissive intervention under FRCP 24(b).
7 That rule states that a party may intervene with the Court's permission: "(1) when a statute of the
8 United States confers a conditional right to intervene; or (2) when an applicant's claim or defense
9 and the main action have a question of law or fact in common." *See also Beckman Indus., Inc. v.*
10 *Int'l Ins. Co.*, 966 F.2d 470, 473 (9th Cir. 1992). FRCP 24(b) goes on to state that

11 **When a party to an action relies for ground of claim or defense**
12 **upon any statute or executive order administered by a federal**
13 **or state governmental officer or agency or upon any**
14 **regulation, order, requirement, or agreement issued or made**
15 **pursuant to the statute or executive order, the officer or agency**
16 **upon timely application may be permitted to intervene in the**
17 **action.** In exercising its discretion the court shall consider whether
the intervention will unduly delay or prejudice the adjudication of
the rights of the original parties.

18 FRCP 24(b) (emphasis added).

19 As already stated, the Governor believes that the Organic Act's tasking of his
20 office to administer the GTIT creates a right to intervene as of right. *See* 48 U.S.C. § 1421i.
21 However, even if the right were not absolute, it certainly would fall with the language of FRCP
22 24(b) allowing permissive intervention as to cases involving statutes administered by state or
23 federal officials. *See* FRCP 24(b). Here, this lawsuit is about the proper application of the GTIT
24 and EIC, and that application is controlled by the Governor. *See* 48 U.S.C. § 1421i.

25 The Governor's intervention will not cause any undue delay or prejudice. *See*
26 FRCP 24(b). As already recited, this case is at any early stage and the need for him to separately
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1 appear recently arose. The Governor's involvement in this case actually will benefit the case.
2 The Governor controls the execution and administration of the GTIT, and ultimately sets the
3 Government's policy on that matter. His presence can only facilitate the resolution of this
4 litigation. Accordingly, permissive intervention should be permitted.
5

6 **CONCLUSION**

7 For the foregoing reasons, the Governor asks that the Court grant his motion to
8 intervene as of right, or in the alternative asks that the Court grant permissive intervention. His
9 proposed form of answer is attached hereto as required by FRCP 24(c).

10 DATED this 27th day of June, 2005.

11 OFFICE OF THE GOVERNOR OF GUAM
12 CALVO & CLARK, LLP
13 Attorneys for Intervenor-Defendant
14 Felix P. Camacho, Governor of Guam

15 By: 

16 DANIEL M. BENJAMIN
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ATTACHMENT

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Civil Case No. CV04-00049

**[PROPOSED] ANSWER TO SECOND
AMENDED COMPLAINT**

1 COMES NOW Intervenor-Defendant Governor of Guam, Felix P. Camacho (the
2 "Governor"), by and through his undersigned attorney, and for his Answer to Plaintiffs' Second
3 Amended Complaint ("SAC") does hereby admit, deny and allege as follows:

4
5 I. INTRODUCTION

6 1. Answering Paragraphs 1.1 and 1.2 of SAC, the Governor admits only that
7 Plaintiffs take the positions set forth therein, but otherwise deny the same.

8 2. Answering paragraph 1.3 of SAC, the Governor admits only that prior to
9 1995, qualified Guam individual income tax taxpayers could claim the Earned Income Tax Credit
10 ("EIC") on Guam individual income tax returns, but otherwise denies Paragraph 1.3.

11 3. Answering Paragraph 1.4 of SAC, the Governor admits only that for tax
12 years 1995 and 1996, the Government of Guam (the "Government") stated on its published
13 individual income tax returns that EIC was inapplicable in Guam, but otherwise denies Paragraph
14 1.4.

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16 4. Answering Paragraph 1.5 of SAC, the Governor admits only that for tax
17 years 1997 and 1998, qualified Guam individual income tax taxpayers could claim the EIC under
18 certain local laws, but otherwise denies Paragraph 1.5.

19 5. Answering Paragraph 1.6 of SAC, the Governor admits only that the
20 Government paid some EIC claims for tax year 1997, but otherwise denies Paragraph 1.6.

21 6. Answering Paragraph 1.7 of SAC, the Governor admits only that for tax
22 years 1999 through 2003, the Government either published on its individual income tax returns
23 that EIC was not applicable in Guam or placed cross-hatching over the portion of the returns used
24 to claim EIC, but otherwise denies Paragraph 1.7.

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26 7. Answering Paragraph 1.8 of SAC, the Governor admits only that in 2004
27 the Government paid an EIC claim of a taxpayer for 1998, but otherwise denies Paragraph 1.8.
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1 8. Answering Paragraph 1.9 of SAC, the Governor admits that Guam law
2 provides for an Income Tax Refund Reserve, the provisions of which speak for themselves, and
3 that the Government has not been able to fully comply therewith in part due to superceding laws,
4 and denies the remainder of Paragraph 1.9.

5
6 9. Answering Paragraphs 1.10, 1.11 and 1.12 of SAC, the Governor admits
7 that Plaintiffs take the positions set forth therein, but otherwise denies the same.

8 **II. JURISDICTION AND VENUE**

9 10. Answering Paragraph 2.1 of SAC, the Governor admits only that the Court
10 generally has original jurisdiction over income tax refund claims pursuant to 48 U.S.C. §1421i(h)
11 and generally has supplemental jurisdiction of non-Federal claims pursuant to 28 U.S.C. §1367,
12 but otherwise denies Paragraph 2.1.

13 **III. THE PARTIES**

14
15 11. Answering Paragraph 3.1 of SAC, the Governor admits that the
16 Government has admitted that Plaintiff Naputi is a resident of Guam and that Plaintiff Naputi
17 filed income tax returns with the Government for tax years 2000 and 2001. On information and
18 belief, the Government has not verified whether Plaintiff Naputi filed income tax returns with the
19 Government for tax years 2002 through 2004 and the Governor therefore denies the same. The
20 Governor admits that the Government has admitted that Plaintiff Naputi did not receive any EIC
21 refunds for the above years. The Governor denies the remainder of Paragraph 3.1.

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23 12. Answering Paragraph 3.2 of SAC, the Governor admits that the
24 Government has admitted that Plaintiff Simpao is a resident of Guam and that Plaintiff Simpao
25 filed an income tax return with the Government for tax year 1996. On information and belief, the
26 Government has not verified whether Plaintiff Simpao filed income tax returns with the
27 Government for tax years 1997 through 2004 and the Governor therefore denies the same. The
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1 Governor admits that the Government has admitted that Plaintiff Simpao has not received any
2 EIC refunds for the above years except that the Government has stated it has not verified whether
3 Plaintiff Naputi received an EIC refund for 1997 and therefore the Governor denies the same.
4 The Governor denies the remainder of Paragraph 3.2.

5
6 13. Answering Paragraph 3.3 of SAC, the Governor admits that the
7 Government has admitted that Plaintiff Cruz is a resident of Guam and that Plaintiff Cruz filed
8 income tax returns for tax years 1995 through 2003. On information and belief, the Government
9 has not verified at this time whether Plaintiff Cruz filed an income tax return with the
10 Government for 2004 and therefore the Governor denies the same. The Governor admits that the
11 Government had admitted that Plaintiff Cruz filed EIC claims for tax years 1997 and 1998, and
12 that Plaintiff Cruz did not receive any EIC refunds for the above years except that the
13 Government has stated it has not verified at this time whether Plaintiff Cruz received an EIC
14 refund for 1997 and therefore the Governor denies the same. The Governor denies the remainder
15 of Paragraph 3.3.
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17 14. Answering Paragraph 3.4 of SAC, the Governor admits the same.

18 IV. FACTUAL ALLEGATIONS

19 A. History of the EIC in Guam.

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21 15. Answering Paragraphs 4.1 and 4.2 of SAC, the Governor admits only that
22 the Organic Act of Guam speaks for itself with respect to the Guam Territorial Income Tax, 48
23 U.S.C. §1421i, but otherwise denies Paragraphs 4.1 and 4.2.

24 16. Answering Paragraphs 4.3 and 4.4 of SAC, the Governor admits only on
25 information and belief that some EIC claims were filed with the Government for tax years 1975
26 through 1994, but otherwise denies Paragraphs 4.3 and 4.4.
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1 17. Answering Paragraph 4.5 of SAC, the Governor admits only that the
2 Attorney General's Office issued Memorandum Opinion No. DOA 89-0750 on June 23, 1989,
3 which Opinion speaks for itself, but otherwise denies Paragraph 4.5.

4 18. Answering Paragraphs 4.6, 4.7 and 4.8 of SAC, the Governor admits only
5 that the Department of Revenue and Taxation issued Revenue Ruling 96-001 and the Attorney
6 General's Office issued Memorandum Opinion DRT/DOA 96-001, all of which speak for
7 themselves, but otherwise denies Paragraphs 4.6, 4.7 and 4.8.

8 19. Answering Paragraph 4.9 of SAC, the Governor admits only that Guam
9 individual income tax returns for 1996 included the words "not applicable in Guam" in the
10 section used to claim EIC, that no other official Guam forms were made available to claim EIC,
11 and admits on information and belief that the same was true for 1995, but otherwise denies
12 Paragraph 4.9.

13 20. Answering Paragraph 4.10 of SAC, the Governor admits the same on
14 information and belief.

15 21. Answering Paragraph 4.11 of SAC, the Governor admits only that Public
16 Law 23-74, 11 G.C.A. §42101 *et seq.*, is a law of Guam, but otherwise denies Paragraph 4.11.
17 The Governor further denies that the funding was "continuous."

18 22. Answering Paragraph 4.12 of SAC, the Governor admits the same.

19 23. Answering Paragraphs 4.13 and 4.14 of SAC, the Governor admits only
20 that most EIC claims were paid for tax year 1997, but otherwise denies Paragraphs 4.13 and 4.14.

21 24. Answering Paragraphs 4.15, 4.16 and 4.17 of SAC, the Governor admits
22 only that individual income tax returns for some years during the period 1999–2003 included the
23 words "not applicable" over the section for claiming EIC, that no other official Guam forms were
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1 made available to claim EIC and that the Supreme Court of Guam issued an advisory opinion in
2 2001 with respect to EIC. The Governor otherwise denies Paragraphs 4.15, 4.16 and 4.17.

3 25. Answering Paragraph 4.18 and 4.19 of SAC, the Governor admits on
4 information and belief that the Government had not paid any EIC for tax years 1995, 1996, 1999
5 – 2003, with one exception for 1998, but otherwise denies Paragraphs 4.18. and 4.19.
6

7 **B. The Income Tax Refund Reserve Fund and Tax Refund Efficient**
8 **Payment Trust Fund**

9 26. Answering Paragraphs 4.20 through 4.27 of SAC, the Governor admits
10 only that the provisions of the Income Tax Refund Reserve Fund, 11 G.C.A. §50101, *et seq.*, and
11 the provisions of the Refund Efficient Payment Trust Fund, 11 G.C.A. §51101, *et seq.*, speak for
12 themselves, but otherwise deny Paragraphs 4.20 through 4.27.

13 27. Answering Paragraph 4.28 of SAC, the Governor is without information or
14 belief at this time regarding the same and, therefore, denies Paragraph 4.28.

15 **C. The Plaintiffs' Experience with the EIC.**

16 **(1) Plaintiff Naputi.**

17 28. Answering Paragraph 4.29 of SAC, the Governor admits that the
18 Government has admitted that Plaintiff Naputi has been a resident of Guam for all relevant tax
19 years and that she filed income tax returns with the Government for tax years 2000 and 2001. On
20 information and belief, the Government has not verified whether Plaintiff Naputi filed tax returns
21 with the Government for tax years 2002 and 2004 and the Governor therefore denies the same.
22 The Governor denies the remainder of Paragraph 4.29.
23

24 29. Answering Paragraphs 4.30 and 4.31 of SAC, the Governor admits that the
25 Government has admitted that Plaintiff Naputi has not received any EIC refunds for the years in
26 question. The Governor denies the remainder of Paragraphs 4.30 and 4.31.
27
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1 30. Answering Paragraphs 4.32 and 4.33 of SAC, the Governor admits that the
2 Government has admitted that Plaintiff Naputi did not receive a notice of disallowance for EIC
3 for the years in question because she did not make a claim for EIC. The Governor denies the
4 remainder of Paragraphs 4.32 and 4.33.

5
6 **(2) Plaintiff Simpao**

7 31. Answering Paragraph 4.34 of SAC, the Governor admits that the
8 Government has admitted that Plaintiff Simpao has been a resident of Guam for the relevant tax
9 years and that she filed an income tax return with the Government for tax year 1996. On
10 information and belief, the Government has not verified whether she filed returns with the
11 Government for tax years 1997 – 2004 and the Governor therefore denies the same. The
12 Governor denies the remainder of Paragraph 4.34.

13
14 32. Answering Paragraph 4.35 of SAC, the Governor denies the same.

15 33. Answering Paragraphs 4.36 and 4.39 of SAC, the Governor denies the
16 same.

17 34. Answering Paragraph 4.37 of SAC, the Governor admits that the
18 Government has admitted on information and belief only that Plaintiff Simpao did not receive an
19 EIC refund or EIC offset against taxes for 1996, 1997, 1998, 2002 or 2003, but otherwise denies
20 Paragraph 4.37.

21
22 35. Answering Paragraph 4.38 of SAC, the Governor admits only that that the
23 Government has admitted Plaintiff Simpao did not receive from the Government a formal
24 disallowance of an EIC claim for 1996, 1997, 1998, 2002 or 2003 because she did not file an EIC
25 claim, but otherwise denies Paragraph 4.38.

1 **(3) Plaintiff Cruz.**

2 36. Answering Paragraph 4.40 of SAC, the Governor admits that the
3 Government has admitted that Plaintiff Cruz has been a resident of Guam during all relevant tax
4 years and that for tax years 1995 through 2003 she filed income tax returns with the Government.
5 On information and belief, the Government has not yet verified whether she filed a tax return with
6 the Government for 2004 and therefore the Governor denies the same. The Governor denies the
7 remainder of Paragraph 4.40.
8

9 37. Answering Paragraph 4.41 of SAC, the Governor admits that the
10 Government has admitted that Plaintiff Cruz filed Guam EIC applications for 1997 and 1998 and
11 denies the remainder of Paragraph 4.41.
12

13 38. Answering Paragraph 4.42 of SAC, the Governor denies the same for lack
14 of information.
15

16 39. Answering Paragraph 4.43 of SAC, the Governor admits that the
17 Government has admitted the same.
18

19 40. Answering Paragraphs 4.44 and 4.45 of SAC, the Governor admits that the
20 Government has admitted that Plaintiff Cruz did not receive formal notice of disallowance for
21 EIC claims because she did not file claims for EIC for any of the years in question except for
22 1997 and 1998 and denies the remainder of Paragraphs 4.44 and 4.45.
23

24 **D. Taxpayers' Efforts to Recover the EIC through Litigation.**

25 41. Answering Paragraphs 4.46, 4.47 and 4.48 of SAC, the Governor admits
26 only that *Santos v. Camacho, et al.*, District Court of Guam Civil No. 04-00006, was filed on
27 February 12, 2004, that the allegations of the CLASS ACTION PETITION FOR RECOVERY
28 OF INCOME TAX REFUNDS OR IN THE ALTERNATIVE FOR A WRIT IN THE NATURE
29 OF MANDAMUS in that case speak for themselves, but otherwise denies Paragraphs 4.46, 4.47

1 and 4.48.

2 42. Answering Paragraphs 4.49 and 4.50 of SAC, the Governor admits that the
3 Court in *Santos v. Camacho, et al.*, entered a STIPULATED ORDER GRANTING
4 PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT, and that the settlement
5 class was expanded as stated in the said STIPULATED ORDER, but otherwise denies Paragraphs
6 4.49 and 4.50.
7

8 43. Answering Paragraph 4.51 of SAC, the Governor admits only that Plaintiff
9 Naputi sought to intervene in *Santos v. Camacho, et al.*, that her petition to intervene was denied
10 by the Court on August 5, 2004, which order speaks for itself, but otherwise denies Paragraph
11 4.51.
12

13 44. Answering Paragraph 4.52 of SAC, the Governor admits only that
14 Plaintiffs filed this action, and that the allegations of the SECOND AMENDED COMPLAINT
15 speak for themselves, but otherwise denies Paragraph 4.52.
16

17 V. CLASS ACTION ALLEGATIONS

18 A. The Proposed Classes.

19 45. Answering Paragraphs 5.1 through 5.10, inclusive, of SAC, the Governor
20 admits only that Plaintiffs seek to represent several proposed classes of individuals, including a
21 subclass, but otherwise denies Paragraphs 5.1 through 5.10.
22

23 B. The Requirements of Fed. R. Civ. P. 23(a).

24 46. Answering Paragraphs 5.11 through 5.32, inclusive, of SAC, the Governor
25 admits only that Plaintiffs have alleged that the proposed classes of individuals, including the
26 subclass, meet the requirements of Fed. R. Civ. P. 23(a), but otherwise denies Paragraphs 5.11
27 through 5.32.
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1 **B. Claim Two – Action for Declaratory Relief Regarding Application of**
2 **26 U.S.C. §6511 to Certain Plaintiffs' Right to Claim an EIC.**

3 55. Answering Paragraph 6.15 of SAC, the Governor admits and denies the
4 same in the identical manner that the Governor admitted and denied the previous allegations of
5 SAC.

6 56. Answering Paragraph 6.16 and 6.17 of SAC, the Governor admits only that
7 Plaintiffs have asserted Claim Two on behalf of themselves and all members of the proposed
8 Potentially Time Barred Subclass of the Claims Made Class, and that Plaintiffs have asserted that
9 Plaintiffs' allegations concerning Claim Two apply for any or all of tax years 1995, 1996 and
10 1999 unless otherwise stated, but otherwise denies Paragraphs 6.16 and 6.17.

11 57. Answering Paragraph 6.18 of SAC, the Governor admits only that the
12 income tax return forms made available by the Governor speak for themselves, but otherwise
13 denies Paragraph 6.18.

14 58. Answering Paragraph 6.19 through 6.27, inclusive, of SAC, the Governor
15 denies the same.

16 **C. Claim Three – For Injunctive [and] Declaratory Relief Providing**
17 **Notice of the Entitlement to the EIC and Availability of a Procedure to**
18 **Make a Claim for Refund of an EIC Overpayment.**

19 59. Answering Paragraph 6.28 of SAC, the Governor admits and denies the
20 same in the identical manner that the Governor admitted and denied the previous allegations of
21 SAC.

22 60. Answering Paragraphs 6.29 and 6.30 of SAC, the Governor admits only
23 that Plaintiffs have asserted Claim Three on behalf of themselves and all members of the Claims
24 Made Class, in addition, and as an alternative, to Claim One, and that Plaintiffs have asserted that
25 Plaintiffs' allegations concerning Claim Three apply for any or all of tax years 1995, 1996 and
26 1999 – 2003 unless otherwise stated, but otherwise denies Paragraphs 6.29 and 6.30.

1 61. Answering Paragraph 6.31 of SAC, the Governor admits only that 26
2 U.S.C. §6511 speaks for itself, but otherwise denies Paragraphs 6.31.

3 62. Answering Paragraphs 6.32 through 6.39, inclusive, of SAC, the Governor
4 denies the same.

5 **D. Claim Four – Claim for Refund of Tax Overpayment Pursuant to 26**
6 **U.S.C. §7422.**

7 63. Answering Paragraph 6.40 of SAC, the Governor admits and denies the
8 same in the identical manner that the Governor admitted and denied the previous allegations of
9 SAC.

10 64. Answering Paragraphs 6.41 and 6.42 of SAC, the Governor admits only
11 that Plaintiffs have asserted Claim Four on behalf of themselves and all members of the Refund
12 Class, and that Plaintiffs have asserted the Plaintiffs' allegations concerning Claim Four apply for
13 any or all of tax years 1995 – 2003 unless otherwise stated, but otherwise denies Paragraphs 6.41
14 and 6.42.

15 65. Answering Paragraphs 6.43, 6.45 and 6.46 of SAC, the Governor denies
16 the same.

17 66. Answering Paragraph 6.44 of SAC, the Governor admits only that 26
18 U.S.C. §6402(a) speaks for itself, but otherwise denies Paragraph 6.44.

19 **E. Claim Five – Claim for Declaratory Relief Regarding Future Refunds**
20 **of Tax Overpayments Associated with the EIC.**

21 67. Answering Paragraph 6.47 of SAC, the Governor admits and denies the
22 same in the identical manner that the Governor admitted and denied the previous allegations of
23 SAC.

24 68. Answering Paragraphs 6.48 and 6.49 of SAC, the Governor admits only
25 that Plaintiffs have asserted Claim Five on behalf of themselves and all members of the Future
26

1 Refund Class, and that Plaintiffs have asserted that Plaintiffs' allegations concerning Claim Five
2 apply for tax year 2000 and any or all subsequent tax years in which the EIC remains authorized
3 by law, but otherwise denies Paragraphs 6.48 and 6.49.

4 69. Answering Paragraph 6.50 of SAC, the Governor admits the same.

5 70. Answering Paragraph 6.51 of SAC, the Governor is without information or
6 belief at the present time as to whether Plaintiffs are eligible, or will be eligible, for EIC during
7 any of the tax years subject to Claim Five and, therefore, denies Paragraph 6.51.

8 71. Answering Paragraphs 6.52 and 6.53 of SAC, the Governor admits only
9 that 26 U.S.C. §6402 and §6511 speak for themselves, but otherwise denies Paragraphs 6.52 and
10 6.53.

11 72. Answering Paragraphs 6.54 and 6.55 of SAC, the Governor admits only
12 that the Attorney General's opinions since June 23, 1989 relating to the EIC and the income tax
13 return forms made available by the Government with respect to the EIC speak for themselves, but
14 otherwise denies Paragraphs 6.54 and 6.55.

15 73. Answering Paragraphs 6.56 and 6.57 of SAC, the Governor denies the
16 same.

17 **F. Claim Six – For Injunctive Relief Requiring the Government to**
18 **Comply with Provisions of 11 G.C.A. §50101 *et seq.* and 11 G.C.A.**
19 **§51101 *et seq.* Requiring Establishment and Funding of a Reserve**
20 **Fund and Trust Fund, Respectively.**

21 74. Answering Paragraph 6.58 of SAC, the Governor admits and denies the
22 same in the identical manner that he has admitted and denied the previous allegations of SAC.

23 75. Answering Paragraphs 6.59 and 6.60 of SAC, the Governor admits only
24 that Plaintiffs have asserted Claim Six on behalf of themselves and all members of the Refund
25 Class and the Future Refund Class, and that Plaintiffs have asserted that Plaintiffs' allegations
26

1 concerning Claim Six apply for all tax years 1995 through the present tax year unless otherwise
2 stated, but otherwise denies Paragraphs 6.59 and 6.60.

3 76. Answering Paragraphs 6.61 and 6.62 of SAC, the Governor admits only
4 that 11 G.C.A. §50101 *et seq.* and §51101 *et seq.* speak for themselves, but otherwise denies
5 Paragraphs 6.61 and 6.62.
6

7 77. Answering Paragraphs 6.63, 6.64 and 6.65 of SAC, the Governor denies
8 the same.

9 78. The Governor denies the entirety of Plaintiffs Prayer for Relief.

10 **VII. AFFIRMATIVE DEFENSES**

11 For Affirmative Defenses to SAC, the Governor asserts as follows:

12 79. The Court lacks subject matter jurisdiction over Plaintiffs' claims for
13 declaratory and injunctive relief because the Government's and/or Governor's sovereign
14 immunity from suit precludes such claims.
15

16 80. The Court lacks subject matter jurisdiction over Plaintiffs' claim for
17 injunctive relief because such relief is prohibited by the Anti-Injunction Act, 26 U.S.C. §7421.
18

19 81. The Court lacks subject matter jurisdiction over Plaintiffs' claims for
20 declaratory relief because such relief does not exist in income tax refund actions under the
21 Organic Act of Guam and the Internal Revenue Code, or is not permitted under the Declaratory
22 Judgment Act, 28 U.S.C. §2201, because the Guam Territorial Income Tax is a Federal tax
23 created by and imposed on Guam by Congress.

24 82. The Court lacks subject matter jurisdiction over Plaintiff Naputi's claims
25 for a money judgment because Plaintiff Naputi has not filed any administrative EIC refund claims
26 with the Government for tax years 2001, 2002 and 2004.
27
28

1 83. The Court lacks subject matter jurisdiction over the claims of Plaintiffs
2 Simpao and Cruz for a money judgment because they have not filed any administrative EIC
3 refund claims with the Government for tax years 1995, 1996 and 1999 through 2004.

4 84. The Court lacks subject matter jurisdiction over the claims of Plaintiffs
5 Simpao and Cruz for a money judgment for all tax years prior to 2001 because said claims are
6 barred by the statute of limitations.

7 85. All of Plaintiffs' claims for equitable and declaratory relief are barred by
8 laches because Plaintiffs did not timely commence this action.

9 86. All of Plaintiffs' claims for equitable and declaratory relief fail to state a
10 claim upon which relief can be granted because they comprise a civil rights action under 42
11 U.S.C. §1983 which is precluded against the Government.

12 87. All of Plaintiffs' claims for equitable and declaratory relief pertaining to
13 tax returns having a due date prior to April 15, 2002 are barred by the statute of limitations.

14 88. Plaintiff Simpao has failed to state a claim for EIC refunds pertaining to tax
15 years 1999, 2000 and 2001 because the filing statute indicated on her income tax returns for these
16 years was "married filing separately."

17 89. Plaintiffs' class action claims do not state a claim upon which relief can be
18 granted because class actions are not allowed in income tax refund suits.

19 90. Plaintiffs' claims and/or the putative class claims are or will be barred,
20 released, estopped, or otherwise precluded by the June 20, 2005 settlement agreement in *Santos v.*
21 *Camacho, et al.* and/or the judgment in that action upon final approval of that agreement, final
22 class certification, and entry of judgment.

23 91. Plaintiffs have failed to join an indispensable party or parties under FRCP
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VIII. PRAYER FOR RELIEF

WHEREFORE, the Governor prays as follows:

- (a) That the Second Amended Complaint be dismissed with prejudice;
- (b) That the Governor be awarded its costs and attorney fees;
- (c) That the Governor be awarded such other or additional relief as may be determined to be appropriate under the circumstances.

DATED this 27th day of June, 2005.

OFFICE OF THE GOVERNOR OF GUAM
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Felix P. Camacho, Governor of Guam

By: 

DANIEL M. BENJAMIN